

The Honorable Thomas S. Zilly

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

REX – REAL ESTATE EXCHANGE,
INC., a Delaware corporation,

Plaintiff,

v.

ZILLOW, INC., a Washington
corporation; ZILLOW GROUP, INC., a
Washington corporation; ZILLOW
HOMES, INC., a Delaware corporation;
ZILLOW LISTING SERVICES, INC., a
Washington corporation; TRULIA, LLC,
a Delaware limited liability company; and
THE NATIONAL ASSOCIATION OF
REALTORS, an Illinois trade
association,

Defendants.

CASE NO. 2:21-cv-00312

**JOINT MOTION FOR RELIEF
FROM DEADLINES**

NOTE ON MOTION CALENDAR:
March 14, 2022

Plaintiff REX - Real Estate Exchange, Inc. (“REX”), Defendants Zillow Inc., Zillow Group, Inc., Zillow Homes, Inc., Zillow Listing Services, Inc., and Trulia, LLC (collectively, “Zillow”), and Defendant National Association of REALTORS® (“NAR”), by and through their attorneys, respectfully ask this Court to extend the remaining deadlines in this case.

1 The Parties originally submitted a discovery plan and proposed schedule June 1, 2021.
2 Dkt. # 79. The Court issued the current schedule on June 9, 2021. Dkt. # 81. Defendants each also
3 filed motions to dismiss. Dkt. ## 83, 84, 90, 92, 93. After the Court's September 2, 2021 Order
4 on the motions (Dkt. # 98), REX filed an Amended Complaint on September 30, 2021 that
5 included new causes of action against each Defendant. Dkt. # 99. Zillow answered that Complaint
6 on October 14, 2021. Dkt. # 100. NAR filed an additional motion to dismiss, which, after briefing,
7 was granted in part and denied in part on December 20, 2021. *See* Dkt. ## 101, 102, 103, and 108.

8 During and after the pendency of the motions to dismiss, the Parties issued discovery
9 requests and each Party subsequently answered them. The Parties also worked cooperatively to
10 resolve issues regarding an ESI Order and submitted that to this Court in January 2022.
11 Dkt. # 112. In December 2021, REX also issued subpoenas to about 50 third parties, most of
12 which are Multiple Listing Services. The Parties are awaiting production from those third parties.

13 Additionally, on January 27, 2022, NAR filed an Answer to REX's Amended Complaint
14 that for the first time asserted a Lanham Act claim against REX. Dkt. # 114. REX filed a motion
15 to dismiss that counterclaim on February 17, 2022. Dkt. # 115. NAR filed an opposition to REX's
16 motion to dismiss on March 7, 2022. Dkt. # 117. REX filed its reply on March 11, 2022. Dkt.
17 # 119.

18 Under the current schedule, opening expert reports are due on March 28, 2022. *See*
19 Dkt. # 81. Though the parties are attempting in good faith to meet the deadlines, due to the
20 complexities and changing claims in the case the parties have not completed sufficient fact
21 discovery to allow for expert reports to be timely exchanged on March 28.

22 The Parties met and conferred on extending the schedule and agreed that the current
23 deadlines should be extended. However, the Parties did not reach agreement on the exact dates
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for a revised schedule. Therefore, the Parties jointly submit their respective proposals to this Court:

	Existing Schedule	REX Proposed schedule	Defendants' Proposed Schedule
Discovery motions filed	5-19-2022	8-29-2022	7-29-2022
Initial Expert Disclosures	3-28-2022	9-26-2022	9-30-2022
Fact discovery cutoff	5-31-2022	9-16-2022	8-19-2022
Rebuttal expert reports		11-14-2022	11-30-2022
Expert discovery cutoff		12-09-2022	1-13-2023
Dispositive motions filed	7-28-2022	12-15-2022	2-10-2023
Expert witness motions	8-4-2022	12-15-2022	2-10-2023
Oppositions to dispositive motions/expert motions		1-16-2023	3-17-2023
Replies re dispositive/expert motions		1-30-2023	4-14-2023
Motions in limine	9-15-2-22	1-19-2023	6-2-2023
Pre-trial order	9-30-2022	2-3-2023	6-16-2023
Trial brief/jury instructions	9-30-2022	2-3-2023	6-16-2023
Deadline to amend pleadings	9-30-2022	2-3-2023	6-16-2023
Pretrial conference	10-7-2022	2-10-2023	6-23-2023

In support of its proposal REX states:

REX notes that the Parties agree within a few days on the amount of additional time needed for Initial Expert Disclosures, which under the current schedule are due March 28, 2022. The parties also agree that Initial Expert Disclosures should come after the close of Fact Discovery, which is also a change from the current schedule.¹

¹ While the original schedule did not contain an explicit deadline for responsive expert reports, the Federal Rules of Civil procedure provide for a 30-day deadline when the schedule does not otherwise specify. *See* Fed. R. Civ. P. 26(a)(2)(D).

1 Defendants propose to move the close of Fact Discovery back by two and a half months,
2 but to move the pre-trial conference back by eight and a half months. REX seeks a more even
3 distribution of the extension, moving fact discovery back by three and a half months from the
4 current schedule, dispositive motions by four and a half months, and the pre-trial conference by
5 four months.

6 REX proposes that the spacing of the pre-trial sequence beginning with filing of motions
7 in limine be about the same as the current schedule. Dkt. # 81. REX does not believe anything
8 has happened in this case since the initial schedule to require the additional time proposed by
9 Defendants for the pre-trial sequence. Defendants' proposal will unnecessarily draw out the later
10 stages of this case causing undue delay and additional burden on REX.

11 **In support of their proposal Defendants state:**

12 Defendants do not disagree with Plaintiff regarding the need for some extension of the
13 fact discovery period in order to ensure sufficient time for the parties to exchange and review
14 relevant documents and depose necessary individuals. Moreover, given the complexity of the
15 antitrust and other issues in the case, the parties are generally in agreement that expert
16 discovery should be bifurcated from fact discovery with additional time following the close of
17 fact discovery for the experts to complete their initial and rebuttal analyses. Defendants note
18 that the original schedule set by the Court did not set a date for the exchange of rebuttal
19 reports, but in light of the expert issues in the case the parties agree that such exchange will be
20 necessary.

21 The parties' proposals diverge with respect to the close of expert discovery, the filing
22 of dispositive and *Daubert* motions, and the filing of other pre-trial submissions.
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1 In light of the parties' general agreement that fact and expert discovery should be
2 extended by approximately seven months, Defendants' position is that the remaining
3 deadlines should also be extended accordingly. Plaintiff, on the other hand, seeks to
4 unreasonably and impractically compress the back end of the schedule. While Plaintiff
5 attempts to portray its proposed schedule above as an equal extension of all deadlines, that
6 ignores that the prior schedule set by the Court contemplated that all discovery—both fact and
7 expert—would be concluded by May 31, 2022. By bifurcating discovery into fact and expert,
8 both Plaintiff and Defendants' schedules contemplate an extension of the total discovery
9 period by approximately seven months. For that reason, Defendants submit the remainder of
10 the deadlines must be extended accordingly.

11 First, with respect to the close of expert discovery, given the parties' proposals, the
12 expert depositions are likely to occur in November and December 2022, which will be
13 complicated by the intervening holidays, thus Defendants believe that it would be beneficial
14 to build in a minimal amount of extra time in order to ensure that the depositions can be
15 completed in a reasonable manner.

16 Second, with respect to dispositive and *Daubert* motions, the Court's original schedule
17 contemplated two full months between the close of discovery and the filing of dispositive and
18 *Daubert* motions. *See* Dkt. # 81. Plaintiff's proposal would allow for only four business days
19 after the completion of all expert depositions to prepare such motions, which is unreasonable
20 and impractical. Instead, Defendants have proposed setting the deadline just over one month
21 after the close of expert discovery in order to allow sufficient time for the parties to evaluate
22 the testimony of the experts and prepare *Daubert* and dispositive motions accordingly.

23 Additionally, given the complexities of this case and the likelihood of multiple *Daubert*

1 motions, Defendants believe that a slightly longer briefing schedule than the normal local
2 practice is necessary here.

3 Finally, Defendants propose setting the deadlines for pre-trial submissions at least two
4 months after the completion of the dispositive and *Daubert* motion briefing. This will allow
5 sufficient time for the Court to resolve such motions, including by potentially dismissing or
6 narrowing the claims at issue through summary judgment, before the parties expend
7 significant resources preparing for trial on complex antitrust and other issues.

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14 DATED: March 14, 2022.

15 By: s/ Mike Vaska

16 By: ** s/ Aravind Swaminathan

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13 ***Listing Services, Inc., and Trulia, LLC***

14 **Pursuant to this Court's Electronic Filing
15 Procedure III L, the electronic signatory has
16 obtained approval from all other signatories.

By: **s/ Tom Rubin

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